

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERMELINDA SEQUIÑO, VICENTE TUMANGAN, AND NENITO
MELVIDA, ACCUSED-APPELLANTS.**

G.R. No. 117397. November 13, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellants Ermelito Sequiño, Vicente Tumangan and Nenito Melvida appeal from the decision[1] of 24 February 1994 (promulgated on 1 March 1994) of the Regional Trial Court (RTC) of Cebu City, Branch 21, in Criminal Case No. CBU-22486, finding them guilty of the crime of robbery with homicide as charged in an information[2] whose accusatory portion reads:

That on or about 24th day of April, 1991 at 12:00 o'clock noon, more or less at the Public Highway, Sitio Lahug, Barangay Antipolo, Municipality of Medellin, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and helping one another, did then and there willfully, unlawfully and feloniously with deliberate intent and intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the payroll money in the amount of FIFTY THOUSAND FIVE HUNDRED FIFTY SEVEN PESOS AND 17/100 (P50,577.17), Philippine Currency, belonging to Had. Jose Ancajas Agricultural Corporation to the damage and prejudice of said corporation in the amount aforesated, and on the occasion thereof, did then and there willfully, unlawfully and feloniously taking advantage of their superior number and strength and with intent to kill, attack, assault and shoot Pedro Broniola who was backriding [sic] a motorcycle, thereby inflicting upon him [a] gunshot wound on the head, and as a result thereof said Pedro Broniola died thereafter.

CONTRARY TO LAW.

This information was filed in due course after receipt by the Office of the Provincial prosecutor of Cebu of the record in Criminal Case No. 4739-M of the Third Municipal Circuit Trial Court (MCTC) of Daanbantayan-Medellin, Province of Cebu, where a complaint for highway robbery with homicide under P.D. No. 532 was filed on 25 April 1991 against the accused-appellants.[3]

In connection with the same incident, a separate information for illegal possession of firearms was filed against accused Vicente Tumangan with the RTC of Cebu, which was docketed as Criminal Case No. CBU-22297 and assigned to Branch 15 of the said court.[4] For reasons undisclosed, the said case and this case were not consolidated for joint trial.

In Criminal Case No. CBU-22486, the witnesses presented by the prosecution in its evidence in chief were Eugenio Godinez, Jimmy Serafin, police officers Elpidio Luna, Alfredo Mondigo and Mario Remulta, Dr. Arturo Sormillon, Lt. Myrna Areola, Emilio Daclan, Atty. Perpetua Socorro Belarmino, and Presentacion vda. de Broniola, while Olympio Lozano was presented as rebuttal witness.

Only the accused testified in their defense.

The People's version of the facts as testified to by its witnesses is as follows:

At around noon of 24 April 1991, Eugenio Godinez, overseer since 1952 of Hacienda Jose Ancajas in Medellin, Cebu, and Pedro Broniola, the hacienda's bookkeeper, went to the Medellin Rural Bank, located three kilometers from the hacienda, to withdraw P50,557.17 to pay for the wages of the hacienda workers. The bank's cashier instructed Jimmy Serafin, janitor and motorcycle driver of the bank, to drive Godinez and Broniola back to the hacienda on one of the bank's motorcycles. Serafin drove the motorcycle with Godinez behind him and Broniola behind Godinez. Godinez carried the money in a money bag which he hung over his left shoulder.[5]

As the three were in sitio Lahug, Antipolo, Medellin, Cebu, and nearing the hacienda, the accused, armed with guns, tried to block their path and ordered them to stop. Godinez recognized the armed men because Nenito Melvida and Emerlindo Sequiño used to work in the hacienda while Vicente Tumangan's parents were Godinez's neighbors.[6]

Serafin drove on, but as the motorcycle went past the accused, he and Godinez heard a gunshot.[7] Godinez noticed that Broniola had fallen off the motorcycle. Serafin leapt from the motorcycle and ran away. The motorcycle toppled over Godinez, pinning him to the ground. Accused Tumangan, with gun in hand, approached Godinez, took the money from the money bag, and fled on foot with his co-accused. With the assailants gone, Godinez ran home, leaving Broniola behind.[8] Meanwhile, Serafin had proceeded to the house of the Broniolas' which was near the crime scene, and informed Broniola's wife of the incident.[9]

SPO Elpidio Luna, who was then at the Medellin police headquarters, received a report from another policeman about a robbery at sitio Antipolo. Together with other policemen and some "Cafgus," Luna went to the crime scene he found an abandoned motorcycle. People who by then had milled around the site informed Luna "that the culprit had already fled." Luna noticed that the "bushes were compressed" and found "a piece of paper utilized as toilet paper with a stool on it [which] was somewhat newly delivered." The paper was a bio-data sheet[10] with the name "Melvida, Nenito" and the entry for the father's name filled in with "Elpidio Melvida." [11]

One bystander volunteered to take Luna to Elpidio Melvida's house where, however, Elpidio told Luna that Nenito Melvida was not there but was at his (Nenito's) brother's house. Elpidio took Luna to the said house where Luna saw the accused Nenito Melvida playing cards with other persons. Luna asked Melvida to go with him to the barangay captain's house. Melvida hesitated at first, but his companions prevailed upon him to go with Luna.[12]

The barangay captain was not home, so Luna took Melvida to the police station instead. Melvida was kept at the station the whole evening of 24 April 1991 for investigation conducted, first, by Luna, then, by his fellow policemen Sgt. Pablo Ygot, Cpl. Alfredo Mondigo and Eliseo Tepait, as Luna had to take his supper. Melvida was allowed to go home the next day, but only after the police had filed criminal charges against him and he had posted bail. Melvida was not assisted by counsel during the police investigation, although Luna assured the trial judge that the Municipal Mayor of Medellin, who is a lawyer, was present. While Luna claimed he asked the Mayor to act as Melvida's counsel, he admitted that his request did not appear in the record of the investigation. Luna's investigation of Melvida was not reduced into writing.[13]

In the course of Luna's investigation, Melvida admitted that he kept "his share the loot" in his house. Melvida then was brought to his house where he got P9,000.00, in one hundred peso bills, placed inside a shoe which he delivered to the policemen.[14]

During the investigation conducted by SPO3 Alfredo Mondigo,[15] Melvida admitted that his (Melvida's) companions during the robbery were Vicente Tumangan and Ermelindo Sequiño, who were staying in the house

of Juanito Hones in Daanlungsod, Medellin, Cebu. Immediately, Mondigo and policeman Proniely Artiquela proceeded to the house of Hones where they saw Tumangan and Sequiño on the porch. Noticing something bulging on the waist of Tumangan, Mondigo and Artiquela approached Tumangan and asked him what was that bulging at his waist. Tumangan did not answer. So, Mondigo patted the bulge which turned out to be a .38 caliber Squires Bingham revolver with holster and four bullets.[16] When asked if he had a license for the firearm, Tumangan answered in the negative. Mondigo and Artiquela then brought Tumangan and Sequiño to the police station. Tumangan was then investigated in the presence of the Municipal mayor. Tumangan admitted that he was one of the holduppers.[17]

Mondigo further declared that the police recovered P22,526.00,[18] but could not explain any further how the recovery was made and from whom. As to this amount, SPO1 Mariano Remulta, property custodian of the Medellin PNP station, merely declared that he was entrusted with the P22,526.00 which, according to the station commander, was "recovered in connection with the highway robbery case." [19]

On the morning of 25 April 1991, the sworn statements of Eugenio Godinez[20] and Jimmy Serafin[21] were taken at the PNP Headquarters in Medellin, Cebu, by P/Cpl. Eliseo Tepait and P/Sgt. Elpidio Luna, respectively. On the same date, the criminal complaint for highway robbery with homicide (Criminal Case No. 4739-M) was filed with the Third MCTC of Daanbantayan-Medellin, Cebu.

Parafin tests were then conducted on the accused by Lt. Myrna Areola, forensic chemist of the PNP Crime Laboratory in Camp Cabahug, Cebu City. The tests yielded negative results for the presence of gunpowder residue on both hands of Tumangan and Melvida, while Sequiño's left hand tested positive for gunpowder residue.[22]

Dr. Arturo Sormillon conducted the post-mortem examination on Pedro Broniola. He found a single gunshot wound "at the upper back of [Broniola's] head. The entrance of the bullet was at the upper back of the nape and the bullet exited at the mouth splitting the tongue." Probing the wound, Dr. Sormillon determined that the bullet followed an upward path from the lower nape and out of the victim's mouth, thus, he raised the possibility that the gun used was positioned lower than the exit wound. He also advanced that by the nature of the wound, death was instantaneous.[23]

Emilio Daclan, stenographer of Branch 15 of the RTC of Cebu, authenticated the transcript of stenographic notes of Mondigo's testimony in *People vs. Tumangan*, Criminal Case No. CBU-22297.[24]

Atty. Perpetua Socorro Belarmino, Branch Clerk of Court of the aforesaid trial court, brought the firearm a .38 caliber revolver with serial number 1022560, and four live bullets, allegedly confiscated from accused Tumangan. Through Belarmino, the prosecution also presented a certification dated 30 May 1992, issued by PNP Cebu Provincial Director Rodolfo L. Esparagoza, stating that Vicente Tumangan had not been issued a license nor a permit to possess the firearm described above.[25] Atty. Belarmino, however, was not the incumbent clerk of court when the said exhibits were presented in Criminal Case No. CBU-22297.[26]

According to Presentation vda. de Broniola, her husband Pedro Broniola earned a monthly salary of P1,200.00 from Hacienda Jose Ancajas and died at the age of 63. At the time of his death, he was already receiving P880.00 from the Social Security System. As a consequence of his death, she suffered "worries" which she quantified at P50,000.00. she also asked P10,000.00 as exemplary damages.[27]

Rebuttal witness Olympio Lozano, "operation officer of the Forever Security and general services," testified to disprove accused Tumangan's claim "that on April 23, the day before the incident in 24 April that was his day off with Forever Security Agency." [28] According to Lozano, Tumangan went on absence without leave on 4 April

1991, as evidenced by a spot report dated 3 April 1991 which he prepared reading as follows:

1. On or about 0700H more or less 3 April 91 at the vicinity of Asian Arts, Inc. Labangon Cebu City, Security Guard Vicente Tumangan, an outgoing security guard failed to turned over service revolver cal. 38 w/ serial number 769398, local made w/ 5rds ammo to the in-coming security guard, which investigation disclosed that SG Tumangan hurriedly went out of the company carrying a medium size bag presumably containing the said firearm.[29]

Lozano also reported to the Cebu City Police Station 3 Tumangan's failure to return the firearm to the security agency, which was recorded as an "Estafa Alarm" in the said station's blotter.[30]

The defense interposed alibi and denial and suggested a frame-up for their exculpation.

Accused-appellant Nenito Melvida claims he was at his brother's house at the time of the crime, as his sister-in-law told him to stay there while she was in Cebu City and her husband was at work. Later that night, police officer Luna came to the house and showed Melvida the Soiled bio-data which he admitted to be his. He was asked if "we were the ones responsible for the robbery and killing" and he said "that is not true." Melvida was brought to the police station where he was asked if he knew those persons who just arrived in his barrio. He identified one those persons as accused-appellant Ermelindo Sequiño whom he saw in Sequiño's aunt's house as he was fetching water at around 5:00 p.m. He claims he was acquainted only with Sequiño and he just met accused-appellant Vicente Tumangan while they had been detained.[31]

Accused-appellants Tumangan and Sequiño also placed themselves somewhere else at the time of the crime. At 7:00 a.m. of 24 April 1991, Tumangan had just left his post as a security guard at the Asian Arts, Inc., in Labangon, Cebu City, and at 1:00 p.m. he went to Medellin together with his friend, Sequiño. They were to procure Sequiño's birth certificate to be used in the latter's wedding. The two arrived in Medellin at 5:00 p.m. and they stayed in Sequiño aunt's house. They went to sleep early as they were tired from their long trip from Cebu City.[32]

At 8:00 p.m., police officers Mondigo and Artequela came and were let in by Sequiño's aunt. Tumangan and Sequiño awoke to find Mondigo and Artequela pointing an armalite and a .38 caliber pistol, respectively, at Tumangan. Other policemen searched the house, claiming they were looking for firearms. Tumangan asked had happened and why the police were pointing guns at him, but the policemen did not answer. He said he had no gun, but the officers said he lied. Tumangan and Sequiño were told to go downstairs, leaving Mondigo and Artequela upstairs to continue their search. When they came down the policemen said they had found a gun, .38 caliber "Squires Bingham," which Tumangan recognized "because it was the same as the firearm given to me as a security guard." [33] Tumangan and Sequiño were brought to the police station that same evening. At the station, Tumangan was interrogated by the police without the assistance of counsel, while Sequiño was left in a cell.[34]

The trial court gave weight to the prosecution's evidence and in its decision it found:

CLEARLY, the accused is interposing the defense of denial with traces of alibi and frame-up. So, it behooves the Court to weigh properly the evidence both ways.

The testimonies of the accused, even collectively considered, do not inspire belief. It is not just because they were self-serving but mostly because their assertions, despite efforts to produce the desired effect, have come out but flimsily skirting on what should squarely be reasonable or logical and natural. And these attributes are too apparent in this Court's narration of evidence and the facts they establish, if at all (supra).

Firstly, the Court must say that the accused's defense of alibi and frame-up is not persuasive. The defense theory bares the badges of a concoction easy to formulate but hard to prove. Thus, as between the positive declarations of the prosecution witnesses (direct eyewitnesses, themselves co-participants with the homicide

victim, Pedro Broniola, in the swift robbery drama: Eugenio Godinez from whose shoulder the money bag was snatched by an armed Vicente Tumangan as Godinez was pinned helpless under the weight of the motorcycle that has fallen to wayside, and Jimmy Serafin, who drove the motorcycle on which had ridden at his back Godinez and then Broniola – they saw the three accused apparently waiting for them as they drove to the hacienda house; they heard shouts from where the accused were for the riders to stop the motorcycle; they heard the gunfire from the accused; they witnessed Broniola hit and dropped from the vehicle by the shooting from the vehicle; they witnesses Serafin leave the vehicle and run away) and the negative statements of the accused, the former deserves more credence (People v. Esquerra, G.R. No.97959, 7 April 1993).

Needless to elaborate, there was homicide in the course of the robbery, and the fact of this death has been officially recorded.

No amount of denial, or petty alibi, can shake the solid identifications of the accused by their own robbery victims. Eugenio Godinez, in particular, was categorical in this, saying that he had long known the three accused even before the incident (page 2, supra.). and how could he - in board daylight and at almost high noon at all - miss recognizing Vicente Tumangan whose face was hardly a foot away from Godinez's face when Tumangan grabbed the money bag from Godinez's shoulder?

The accused themselves were one in telling the Court that they and the police officers who had followed up this case had not had any misunderstanding or differences; they did not even know each other until after the incident. Absent any showing that the law enforcers were moved by ill-motive or improper reasons to falsely impute a serious charge against the accused, it is presumed that they had acted in the regular performance of their duties. (id.).

To repeat, the Court must grant credibility to the witnesses for the prosecution. Their testimonies, unlike those of the accused, are not illogical, inconsistent and contrary to human experience (People v. Salazar, et al., G.R. No.84391, 7 April 1993). The Court did closely observe each and every witness's demeanor while testifying, disregarding attendant and expected little inconsistencies, usually normal, and must hold that the prosecution witnesses were definitely more trustworthy in their pronouncements in court than those for the defense. Defense witnesses now and then betrayed their smugness when they should rather be spontaneous. In fact, the Court was disturbed when there occurred an unexpected unison by the defense counsel and one of the accused in wrongly surnaming a relative of the accused ("Hones" from Diones).

The mere say-so by Vicente Tumangan and Ermelindo Sequiño that they left Cebu City at 1:00 in the afternoon of 24 April 1991 and arrived in Medellin at 5:00 that afternoon does not remove the possibility, if not the probability, that they had actually been in Medellin earlier -- with their Medellin-based relative, Nenito Melvida -- than the time of the robbery. A few hours make a lot of difference, don't they? After all, the frequency of the trips of hacienda payroll money from the bank had become of public knowledge, especially among the hacienda laborers, and their relatives of course!

In total, alibi -- denial -- is a weak defense and becomes weaker in the face of positive identification of the accused by the prosecution witnesses (People v. Estrella, G.R. Nos. 92506-07, 28 April 1993).

Another point must be mentioned now.

Explicit is the evidence to prove that the three accused acted in concert, clearly pursuing the same objective. Thus, from their conduct conspiracy may be inferred. For, as been held, it is not essential that there is proof of a previous agreement to commit a crime -. From acts and circumstances may logically be inferred the existence of a common design to commit the offense charged (People v. Buntan, Sr., G.R. No. 90736, 12 April 1993).

Thus, with conspiracy present, the fact of shooting from the direction of the three accused and the fact that the shooting hit Broniola who fell off the motorcycle, and killed him, are all that matter, irrespective as to who of the three had indeed fired the fatal shot. For, after all, the liability of one is the culpability of all in a

conspiracy. The finger of probability, though, strongly points to accused Ermelindo Sequiño as the gunfiring member of the armed trio upon the forensic chemist's finding of "presence of gunpowder residue on the left hand of Ermelindo Sequiño," reliable that the paraffin tests on the accused could be, they having been administered just slightly more than 24 hours after the fatal shooting was done. Add the following:

Undisputed is the fact of police recovery of "partitions" of the loot (cash) not from one of the three accused but from the three of them in separate "hiding" places.

The evidence has established indubitably the following material facts:

The motorcycle riders (named, supra), who were carrying cash just withdrawn from the Medellin Rural Bank for the salaries of employees of the Hacienda Ancajas were held up by three armed men who were identified as the accused, about noontime on 24 April 1991 in sitio Lahug, barangay Antipolo, municipality of Medellin, province of Cebu, and one of the hacienda trustee, before the three escaped away. Shortly momentarily before this, and in the process of the robbery, the hacienda bookkeeper, another hacienda trustee who was also on the motorcycle, was shot dead by the malefactors. Without the shooting which had resulted in homicide, the culprits would not have possibly succeeded in the robbery.

Without hesitate now the Court, considering the facts proved by the evidence, must declare that the crime committed by the accused was robbery with homicide (robo con homicido) as provided by Article 294(1) of the Revised Penal Code which reads, thus:

Art. 294. Robbery with violence against or intimidation of persons- Penalties. -- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

The Court entertains no doubt whatsoever that the accused did employ violence against (shooting and killing) and intimidation of persons (which in fact compelled the robbery victims, except the killed one, to scamper away fast from the scene of the crime) to consummate their criminal intent to take away, as they did, for personal gain, the personal property of Hacienda Ancajas (payroll money under the custodial trust of the hacienda overseer and paymaster). (See *People v. De la Cruz*, L-1020063, 20 January 1993.[35])

It then rendered judgment as follows:

WHEREFORE, the Court finds ERMELINDO SEQUIÑO, VICENTE TUMANGAN and NENITO MELVIDA guilty beyond reasonable doubt of the crime of robbery with homicide as defined and penalized by Article 294 (1) of the Revised Penal Code, and hereby sentences EACH OF THEM to suffer the penalty of Reclusion Perpetua.

The above-named accused are ordered to indemnify, jointly and severally, the heirs of killed victim Pedro Broniola, specifically his widow, Presentacion vda. de Brociola, with the amount of Fifty Thousand Pesos (P50,000). They are further ordered to pay, also jointly and severally, the sum of Ten Thousand Pesos (P10,000) each to the aforementioned widow, Eugenio Godinez and Jimmy Serafin in concept of moral and exemplary damages. Recovered sums of money, part of the total amount of money taken in the robbery, are ordered returned to the Hacienda Ancajas, even as the same accused are ordered to pay back, jointly and severally, to said Hacienda the balance of the total loot still unaccounted for.

Costs must likewise be paid by the three accused.

SO ORDERED.[36]

Forthwith, the accused appealed to us from the judgment by filing a notice of appeal.[37]

We accepted the appeal on 20 February 1995.

In their Appellant's Brief filed on 21 August 1995, the accused contend that the trial court erred in its findings:

FIRST ASSIGNMENT OF ERROR

.. THAT ACCUSED .. ARE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE, AND SENTENCING THEM TO SERVE THE PENALTY OF LIFE IMPRISONMENT AND TO PAY JOINTLY AND SEVERALLY, TO THE HEIRS OF KILLED VICTIM PEDRO BRONIOLA, SPECIFICALLY THE WIDOW, PRESENTACION VDA. DE BRONIOLA, THE AMOUNT OF P50,000, AND FURTHER TO PAY JOINTLY AND SEVERALLY, THE SUM OF P10,000 EACH TO THE AFORENAMED WIDOW, EUGENIO GODINEZ, AND JIMMY SERAFIN IN THE CONCEPT OF MORAL AND EXEMPLARY DAMAGES.

SECOND ASSIGNMENT OF ERROR

.. THAT ACCUSED .. ARE GUILTY OF THE CRIME CHARGED, DESPITE THE LACK OF IDENTITY OF THE PERSON WHO FIRED THE ALLEGED SHOT THAT HIT AND KILLED THE VICTIM PEDRO BRONIOLA.

THIRD ASSIGNMENT OF ERROR

.. THAT THERE WAS CONSPIRACY, THE PROSECUTION NOT HAVING PROVED OF ANY EVIDENCE SHOWING CONSPIRACY.

FOURTH ASSIGNMENT OF ERROR

.. WHEN IT FAILED TO CONSIDER THE NON-OBSERVANCE OF THE CONSTITUTION IN THE INVESTIGATION WITH THE ACCUSED BY THE POLICE, AS WHEN THE COURT SAYS "THE COURT, HOWEVER, MUST EXPRESS ITS DISMAY OVER THE QUESTIONABLE METHODS BY THE POLICE OFFICERS CONCERNED MOCKED THE CONSTITUTION, WHICH THEY THEMSELVES HAVE SWORN TO HONOR AND REVERE, WHEN THEY DID NOT REMIND THE ACCUSED OF THEIR RIGHT TO REMAIN SILENT AND TO BE ASSISTED BY COUNSEL..

The disposition of the first assigned error depends on whether the accused were properly found guilty of the crime charged, hence, it shall be discussed last. The second and third errors may be resolved together as they pertain to the same issue of conspiracy.

We shall first take up the fourth assigned error as it raises a constitutional problem deserving of primary consideration.

The fourth assigned error is self-contradictory. While it starts with a claim that the trial court failed to consider the non-observance by the police of the constitutional safeguards during the investigation of the accused, it quoted the trial court's statement precisely expressing its dismay over the questionable method used by the police in such investigation and considered it a mockery of the Constitution which the police had sworn to honor and revere. We quote what the trial court said:

The Court, however, must express its dismay over the questionable means employed by the police in investigating the accused. The police officers concerned mocked the Constitution, which they themselves have sworn to honor and revere, when they did not remind the accused of their right to remain silent and to be assisted by counsel. They must be instructed by their superiors in no uncertain terms to respect the Constitution at all times in the performance of their duties. Be that as it may, this unconstitutional act may not benefit the cause of the accused. After all, nothing in the evidence for the prosecution was taken from the police investigation in question -- no fruit, as it were, from the "poisoned tree."^[38]

Also, in the course of his testimony, police officer Elpidio Luna was rebuked by the trial court for his violation of the constitutional rights of accused Melvida. Thus:

Court:

So, you investigated Nenito Melvida?

A

I investigated Nenito Melvida.

Court:

You investigated him after you arrested him? Why did you arrest him?

A

I believed that he was a suspect of that robbery.

Court:

Was your belief sufficient to arrest him?

A

I only invite him for investigation. I did not arrest him.

Court:

That is the enertia [sic] of martial law. "No we did not arrest him, we only invited him."

Court to witness:

Was he assisted by a lawyer when you investigated him?

A

No there was none because in our place we can seldom find lawyers.

Court:

So, since there are no lawyers you go on arresting and investigating without even sufficient ground for such arrest?

A

We did not arrest him we only invite him.

Court:

How?

A

I told him, "Please, go with us because we have something to ask from you."

Court:

Why did you not ask him right there? Why did you have to make him go with you?

A

because the Barangay captain was not around I should have asked him there?

Court:

You were earlier set to investigate him that is why you brought him to your headquarters?

A

Yes sir.

Court:

Do you have the right to investigate someone whom you have not arrested?

A

In our police work we can do the interrogation and investigation as long as we will not violate the human rights.

Court:

Did you violate the human rights of Nenito Melvida?

A

I did not violate Your Honor.[39]

However, while the trial court found a mockery of the Constitution and in fact declared that "nothing in the evidence for the prosecution was taken from the police investigation in question -- no fruit, as it were, from the 'poisoned tree,'-- we do not find incongruous the following statement of the trial court:

Undisputed is the fact of police recovery of "partitions" of the loot (cash) not from one of the three of them in separate "hiding" places.[40]

What was "recovered" from accused Melvida was P9,000.00 which, he admitted, was his share of the loot.[41] As to the difference between P22,526.00 and P9,000.00, no evidence was adduced how and from whom it was recovered. Police officer Mariano Remulta merely declared that the P26,526.00 was entrusted to him by the station commander who told him that the amount was 'recovered in connection with the highway robbery case.'[42]

Since the "recovery" of P9,000.00 from Melvida was due to his "admission" in the course of the custodial interrogation made in violation of paragraph (1) of Section 12, Article III of the Constitution and therefore inadmissible in evidence pursuant to paragraph (3) of the said section then the P9,000.00 cannot also be admitted in evidence as a "fruit of the poisonous tree." The rule is settled that once the primary source (the "tree") is shown to have been unlawfully obtained -- as the admission of Melvida in this case -- any secondary or derivative evidence (the "fruit") derived from it - - the P9,000.00 obtained from Melvida as a consequence of his "admission" -- is also inadmissible.[43]

The above statement of the trial court may, however, be considered mere surplusage since, in the final analysis, it did not take into account against the accused whatever admission they made during police interrogation. We need to elaborate, however, why such admissions are inadmissible in evidence.

Regardless of Luna's claim to the contrary, accused Nenito Melvida was arrested. An arrest "is the taking of a person into custody in order that he may be bound to answer for the commission of an offense,"[44] and it is made "by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest." [45] Melvida's voluntarily going with Luna upon the latter's "invitation" was a submission to Luna's custody, and Luna believed that Melvida was a suspect in the robbery charged herein, hence, Melvida was being held to answer for the commission of the said offense.

Since he was arrested without a warrant, the inquiry must now be whether a valid warrantless arrest was effected. Rule 113 of the Rules on Criminal Procedure provides:

Section 5. Arrest without warrant; when lawful . -- A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it;
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The first and last conditions enumerated above are not applicable in this case; and under the facts herein, neither does the second condition apply. Luna's basis for arresting Melvida was the bio-data sheet with Melvida's name on it found at the crime scene. By no means can this indicate that Melvida committed the offense charged. It does not even connote that Melvida was at the crime scene for the bio-data sheet could have been obtained by anyone and left at the crime scene long before or after the crime was committed. Luna, therefore, had no personal knowledge of facts indicating Melvida's guilt; at best, he had an unreasonable suspicion. Melvida's arrest was thus illegal.

After his unlawful arrest, Melvida underwent custodial investigation. The custodial investigation commenced when the police pinpointed Melvida as one of the authors of the crime or had focused on him as a suspect thereof.[46] This brought into operation paragraph (1) of Section 12, Article III of the Constitution guaranteeing the accused's rights to remain silent and to counsel. And his right to be informed of these rights.[47] The said paragraph provides:

SEC. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

There was no showing that Melvida was ever informed of these rights, and Luna admitted that Melvida was not assigned by counsel during the investigation. Indisputably, the police officers concerned flouted these constitutional rights of Melvida and Tumangan and deliberately disregarded the rule regarding an investigator's duties prior to and during custodial interrogation laid down in *Morales vs. Enrile*[48] and reiterated in a catena of subsequent cases.[49]

The next task is to determine whether the crime charged under the information was sufficiently established. To sustain a conviction for the crime of robbery with homicide, it is necessary that the essential elements of the crime be conclusively proved.[50] Taking, with the intent to gain, of personal property belonging to another by means of violence against or intimidation of any person, or using force upon things makes one liable for robbery.[51] Intimidation is present in the taking when "acts are performed which, in their own nature or by reason of the circumstances under which they are executed, restrict or hinder the free exercise of the will of the victim or inspire him with fear." [52]

In this case, Tumangan, with gun in hand and while Godinez was helplessly pinned under the motorcycle, dispossessed the latter of the money he was carrying. That Tumangan was armed and had in fact already fired it,

causing injury to Broniola which caused his death, and that Godinez was defenseless naturally impaired the latter's free will, producing the intimidation element in robbery.

The crime becomes robbery with homicide when by reason or on occasion of a robbery with the use of violence against or intimidation of person, the crime of homicide shall have been committed.[53] The term "homicide" is understood in its generic sense, hence, it includes the commission of murder or slight physical injuries during the robbery.[54]

Since the robbery in this case was accompanied by the killing of Pedro Broniola, the crime becomes robbery with homicide, as the trial court correctly ruled.

The trial court was likewise correct in finding conspiracy in this case. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony of a felony and decide to commit it. It is not required that there be an agreement for an appreciable period prior to be occurrence; rather, it is sufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution. The agreement to commit a crime may be gleaned from the mode and manner of the commission of the offense or inferred from the acts of the accused which point to a joint purpose and design, concerted action, and community of intent.[55]

In this case, the three accused were one in blocking the motorcycle of Godinez, Serafin, and Broniola, and commanding their victims to stop. They were also unanimous in fleeing the crime scene, taking a single route to Daang Lungsod. These concerted acts indicate a community of criminal intent which is the essence of conspiracy. Conspiracy having been established, it matters not who among the accused actually shot and killed Pedro Broniola, for that criminal act is attributable to all three accused.

Thus are the second and third assigned errors settled. The final task is to determine the appropriate penalty against the accused. The Revised Penal Code prescribes the penalty of reclusion perpetua to death for the crime of robbery with homicide,[56] but since the offense in this case was committed on 24 April 1991, or while the imposition of the death penalty had been suspended[57] and before its reimposition under R.A. No. 7659, the trial court correctly imposed the penalty of reclusion perpetua. We do not, however, agree with its awards of moral and exemplary damages of P10,000.00 each to Eugenio Godinez, Jimmy Serafin, and Presentacion vda de Broniola. There is no factual basis therefor insofar as Godinez and Serafin are concerned since they did not ask for and testify thereon. Only Presentacion vda. de Broniola asked for moral damages of P50,000.00 for her "worries" due to the death of her husband.[58] As to exemplary damages, the law is clear that they can be recovered in criminal cases only when the crime was committed with one or more aggravating circumstances,[59] none of which was proven in this case. The award then of P10,000.00 in favor of Presentacion vda. de Broniola must be deemed as for moral damages only.

Also, the trial court should have ordered the accused-appellants to indemnify, jointly and severally, the Hacienda Jose Ancajas in the amount of P50,577.17, representing the amount withdrawn from the bank and taken by them from Eugenio Godinez, since it was never established by admissible evidence that any portion of this amount had been recovered.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision of Branch 21 of the Regional Trial Court of Cebu City of 24 February 1994 in Criminal Case No. CBU-22486 is hereby AFFIRMED, subject to the following modifications, viz., the award of P10,000.00 each to Eugenio Godinez and Jimmy Serafin are deleted, while that for Presentacion vda de Broniola shall only be considered as moral damages, and that the accused-appellants are hereby ordered, jointly and severally, to indemnify the Hacienda Jose Ancajas of Medellin, Cebu, the sum of Fifty Thousand Five Hundred and Seventy-Seven Pesos and Seventeen Centavos (P50,577.17),

with interest thereon at the legal rate reckoned from 24 April 1991 and until it shall have been fully paid.

Costs against the accused-appellants.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), 161-178; Rollo, 23-40. Per Judge Peary G. Aleonar.

[2] Id., 1-2; Id., 2-3

[3] OR, 5

[4] Id., 58, 60, 63.

[5] TSN, 20 December 1991, 3-5, 7; TSN 14 January 1992, 6; TSN, 16 January 1992, 10-11.

[6] TSN, 20 December 1991, 6; TSN 14 January 1992, 5-8.

[7] TSN, 20 December 1991, TSN, 16 January 1992, 15.

[8] TSN, 20 December 1991, 7; TSN, 16 January 1992, 15.

[9] TSN, 16 January 1992, 16.

[10] Exhibit "J", OR, 55.

[11] TSN, 22 July 1992, 3-6.

[12] Id., 6.

[13] Id., 7-11, 16.

[14] Id., 17-18.

[15] His testimony on direct examination in the case for illegal possession of firearms against Vicente Tumangan (Criminal Case No. CBU-22297; Exhibit "L"; OR, 101-113) was considered as his testimony or direct examination in Criminal Case No. CBU-22486.

[16] Exhibit "L"; OR 105-106.

[17] Id., 106; 110.

[18] Id.

[19] TSN, 12 March 1992, 3, 8.

[20] Exhibit "A"; OR, 6.

[21] Exhibit "B"; Id., 7.

[22] TSN, 11 March 1992, 4; Exhibit "D"; Id., 73.

[23] TSN, 22 May 1992, 5-10.

[24] TSN, 24 August 1992, 3-5.

[25] Id., 6-8.

[26] Id., 10.

[27] TSN, 12 March 1992, 15-17.

[28] TSN, 11 May 1993, 2.

[29] Exhibit "Q"; OR, 143.

[30] TSN, 11 May 1993, 5; Exhibit "R", Id., 144.

[31] TSN, 9 December 1992, 2-11

[32] TSN, 5 October 1992, 4

[33] Id., 14-18.

[34] TSN, 8 December 1992, 7-9. Although Tumangan claims both he and Sequiño were "investigated" by the police (TSN, 5 October 1992, 24)

[35] OR, 175-177; Rollo, 36-39.

[36] OR, 178; Rollo, 40.

[37] Id., 182; Id., 41.

[38] OR, 177-178; Rollo, 39-40.

[39] TSN, 22 July 1992, 7-9.

[40] OR, 177; Rollo, 39.

[41] TSN, 22 July 1992, 17-18.

[42] TSN, 12 March 1992, 3, 8

[43] *People vs. Alicando*, 251 SCRA 293, 314-315 [1995], citing *Nardone vs. U.S.*, 308 U.S. 388, 60 S. Ct. 266, 84 L. ed 307 [1939]; *People vs. Salanga*, 234 SCRA 407 [1994].

[44] Section 1, Rule 113, Rules of Court.

[45] Section 2, Id.

[46] *People vs. Laurente*, G.R. No. 116734, 29 March 1996, 27.

[47] This section was implemented by R.A. No. 7438, entitled "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation As Well As The Duties of the Arresting, Detaining, And Investigating Officers And Providing Penalties For Violations Thereof," and approved on 27 April 1992.

[48] 121 SCRA 538 [1983].

[49] Among them, *People vs. Galit*, 135 SCRA 465 [1985]; *People vs. Lumayok*, 139 SCRA 1 [1985]; *People vs. Albofera*, 152 SCRA 123 [1987]; *People vs. Marquez*, 153 SCRA 700 [1987]; *People vs. Penillis*, 205 SCRA 546 [1992]; *People vs. Basay*, 219 SCRA 404 [1993].

[50] See *People vs. Martinado*, 214 SCRA 712 [1992]; *People vs. Barlis*, 231 SCRA 426, 442 [1994].

[51] Article 293, Revised Penal Code.

[52] RAMON C. AQUINO, 3 THE REVISED PENAL CODE [1988 ed.], 133.

[53] Article 294 (1), Revised Penal Code.

[54] People vs. Penillos, 205 SCRA 546, 564 [1992].

[55] People vs. Canillo, 236 SCRA 22, 41-42 [1994]; People vs. Hubilla, G.R. No. 114904, 29 January 1996, 8.

[56] Article 294(1), Revised Penal Code.

[57] Section 19(1), 1987 Constitution.

[58] TSN, 12 March 1992, 16.

[59] Article 2230, Civil Code.

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